Bureau of Customs and Border Protection

Treasury Decision

19 CFR Parts 10 and 163

(T.D. 03–16)

RIN 1515–AD19

IMPLEMENTATION OF THE ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to the Customs Regulations to implement the trade benefit provisions for Andean countries contained in Title XXXI of the Trade Act of 2002. The trade benefits under Title XXXI, also referred to as the Andean Trade Promotion and Drug Eradication Act (the ATPDEA), apply to Andean countries specifically designated by the President for ATPDEA purposes. The ATPDEA trade benefits involve the entry of specific apparel and other textile articles free of duty and free of any quantitative restrictions, limitations, or consultation levels, the extension of duty-free treatment to specified non-textile articles normally excluded from duty-free treatment under the Andean Trade Preference Act (ATPA) program if the President finds those articles to be not import-sensitive in the context of the ATPDEA, and the entry of certain imports of tuna free of duty and free of any quantitative restrictions. The regulatory amendments contained in this document reflect and clarify the statutory standards for the trade benefits under the ATPDEA and also include specific documentary, procedural and other related requirements that must be met in order to obtain those benefits.

DATES: Interim rule effective March 25, 2003; comments must be submitted by May 27, 2003.

ADDRESSES: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations

Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

BACKGROUND

Andean Trade Promotion and Drug Eradication Act

On August 6, 2002, the President signed into law the Trade Act of 2002 (the "Act"), Public Law 107–210, 116 Stat. 933. Title XXXI of the Act concerns trade benefits for Andean countries, is referred to in the Act as the "Andean Trade Promotion and Drug Eradication Act" (the "ATPDEA"), and consists of sections 3101 through 3108. This document specifically concerns the trade benefit provisions of section 3103 of the Act which is headed "articles eligible for preferential treatment."

Subsection (a) of section 3103 of the Act amends section 204 of the Andean Trade Preference Act (the ATPA, codified at 19 U.S.C. 3201–3206). The ATPA is a duty preference program that applies to exports from those Andean region countries that have been designated by the President as program beneficiaries. The origin and related rules for eligibility for duty-free treatment under the ATPA are similar to those under the older Caribbean Basin Economic Recovery Act (the CBERA, also referred to as the Caribbean Basin Initiative, or CBI, statute, codified at 19 U.S.C. 2701–2707), and, as in the case of the CBI, all articles are eligible for duty-free treatment under the ATPA (that is, they do not have to be specially designated as eligible by the President) except those articles that are specifically excluded under the statute.

The changes to section 204 of the ATPA made by subsection (a) of section 3103 of the Act involve the following: (1) the removal of section 204(c) which provided for the application of reduced duty rates (rather than duty-free treatment) for certain handbags, luggage, flat goods, work gloves, and leather wearing apparel, with a consequential redesignation of subsections (d) through (g) as (c) through (f), respectively; and (2) a revision of section 204(b). Prior to the amendment effected by subsection (a) of section 3103 of the Act, section 204(b) of the ATPA was headed "exceptions to duty-free treatment" and consisted only of a list of eight specific products or groups of products excluded from ATPA duty-free treatment.

As a result of the amendment made by subsection (a) of section 3103 of the Act, section 204(b) of the ATPA now is headed "exceptions and special rules" and consists of six principal paragraphs. These six paragraphs are discussed below.

Paragraphs (1) and (2): Articles that are not import-sensitive and excluded articles

Paragraph (1) of amended section 204(b) is headed "certain articles that are not import-sensitive" and provides that the President may proclaim duty-free treatment under the ATPA for any article described in subparagraph (A), (B), (C), or (D) that is the growth, product, or manufacture of an ATPDEA beneficiary country, that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country, and that meets the requirements of section 204, if the President determines that the article is not import-sensitive in the context of imports from ATPDEA beneficiary countries. Subparagraphs (A), (B), (C), and (D) cover, respectively:

1. Footwear not designated at the time of the effective date of the ATPA (that is, December 4, 1991) as eligible articles for the purpose of the Generalized System of Preferences (the GSP, Title V of the Trade Act of 1974, codified at 19 U.S.C. 2461–2467);

2. Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the Harmonized Tariff Schedule of the United States (HTSUS);

3. Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply; and

4. Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the GSP.

Paragraph (2) of amended section 204(b) is headed "exclusions" and provides that, subject to paragraph (3), duty-free treatment under the ATPA may not be extended to the following:

1. Textile and apparel articles which were not eligible articles for purposes of the ATPA on January 1, 1994, as the ATPA was in effect on that date;

2. Rum and tafia classified in subheading 2208.40 of the HTSUS;

3. Sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas; and

4. Tuna prepared or preserved in any manner in airtight containers, except as provided in paragraph (4).

The effect of new paragraphs (1) and (2) is to divide the former section 204(b) list of eight types of products excluded from ATPA duty-free treatment into two groups of four each. The four types of products covered by paragraph (1) would no longer be excluded from ATPA duty-free treatment but rather would be eligible for that treatment, provided that

the President makes the appropriate negative import sensitivity determination. For these products (which include the handbags, luggage, flat goods, work gloves, and leather wearing apparel to which reduced duty rates previously applied under removed section 204(c)), the country of origin and value-content and related requirements under section 204(a) of the ATPA and the regulations thereunder would apply. The four types of products covered by paragraph (2) would remain as exclusions from duty-free treatment except as otherwise provided in paragraph (3) in the case of certain apparel and textile articles and paragraph (4) in the case of certain tuna products, and the exclusion in the case of sugar and sugar products has been reworded to refer to tariff-rate quota applicability rather than HTSUS classification. Paragraphs (3) through (6) of amended section 204(b), as discussed below, are entirely new provisions.

Paragraph (3): Preferential treatment of textile articles

Paragraph (3) of amended section 204(b) is headed "apparel articles and certain textile articles." Paragraph (3)(A) provides that apparel articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country shall enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels, but only if those articles are described in subparagraph (B), which states that the apparel articles referred to in subparagraph (A) are the following:

1. Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or the United States, or both, exclusively from any one or any combination of the following [clause (i)]:

a. Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in the United States). Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States [subclause (I)];

b. Fabrics or fabric components formed or components knit-to-shape, in one or more ATPDEA beneficiary countries, from yarns wholly formed in one or more ATPDEA beneficiary countries, if those fabrics (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries) or components are in chief value of llama, alpaca, or vicuña [subclause (II)];

c. Fabrics or yarns, to the extent that apparel articles of those fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the North American Free Trade Agreement (NAFTA) [subclause (III)]; and

d. Fabrics or yarns, to the extent that the President has determined that the fabrics or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the treatment provided under clause (i)(III) [clause (ii)];

2. Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape in one or more ATPDEA beneficiary countries from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries), whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i) (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i)). For these articles, preferential treatment starts on October 1, 2002, and extends for each of the four succeeding 1-year periods, subject to the application of annual quantitative limits expressed in square meter equivalents and with an equal percentage increase in the limit for each succeeding year [clause (iii)];

3. A handloomed, handmade, or folklore textile or apparel article of an ATPDEA beneficiary country that the President and representatives of the ATPDEA beneficiary country concerned mutually agree upon as being a handloomed, handmade, or folklore good of a kind described in section 2.3(a), (b), or (c) or Appendix 3.1.B.11 of Annex 300–B of the NAFTA and that is certified as such by the competent authority of the beneficiary country [clause (iv)]; and

4. Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or one or more ATPDEA beneficiary countries, or both, but excluding articles entered under clause (i), (ii), (iii), or (iv) [clause (v)(I)]. However, during each of four 1-year periods starting on October 1, 2003, the articles in question are eligible for preferential treatment under paragraph (3) only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of a producer or an entity controlling production that are entered and eligible under clause (v)(I) during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under clause (v)(I) during the preceding 1-year period [clause (v)(II)]; the 75 percent standard rises to 85 percent for a producer or entity controlling production whose articles are found by Customs to have not met the clause (v)(II) 75 percent standard in the preceding year [clause (v)(III)].

In addition to the articles described above, paragraph (3)(B) provides for preferential treatment of the following non-apparel textile articles:

1. Textile luggage assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS [clause (vii)(I)]; and

2. Textile luggage assembled from fabric cut in an ATPDEA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States [clause (vii)(II)].

Clause (vi) under paragraph (3) sets forth special rules that apply for purposes of determining the eligibility of articles for preferential treatment under paragraph (3). These special rules are as follows:

1. Clause (vi)(I) sets forth a rule regarding the treatment of findings and trimmings. It provides that an article otherwise eligible for preferential treatment under paragraph (3) will not be ineligible for that treatment because the article contains findings or trimmings of foreign origin, if those findings and trimmings do not exceed 25 percent of the cost of the components of the assembled product. This provision specifies the following as examples of findings and trimmings: sewing thread, hooks and eyes, snaps, buttons, "bow buds," decorative lace trim, elastic strips, zippers (including zipper tapes), and labels.

2. Clause (vi)(II) sets forth a rule regarding the treatment of specific interlinings, that is, a chest type plate, "hymo" piece, or "sleeve header," of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments. Under this rule, an article otherwise eligible for preferential treatment under paragraph (3) will not be ineligible for that treatment because the article contains interlinings of foreign origin, if the value of those interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article. This provision also provides for the termination of this treatment of interlinings if the President makes a determination that United States manufacturers are producing those interlinings in the United States in commercial quantities.

3. Clause (vi)(III) sets forth a *de minimis* rule which provides that an article that would otherwise be ineligible for preferential treatment under paragraph (3) because the article contains yarns not wholly formed in the United States or in one or more APTDEA beneficiary countries will not be ineligible for that treatment if the total weight of all those yarns is not more than 7 percent of the total weight of the good.

4. Finally, clause (vi)(IV) sets forth a special origin rule that provides that an article otherwise eligible for preferential treatment under clause (i) or clause (iii) will not be ineligible for that treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

Paragraph (4): Preferential treatment of tuna

Paragraph (4) of amended section 204(b) concerns the preferential treatment of tuna. Paragraph (4)(A) provides for the entry in the United States, free of duty and free of any quantitative restrictions, of tuna that is harvested by United States vessels or ATPDEA beneficiary country vessels, that is prepared or preserved in any manner, in an ATPDEA beneficiary country, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kilograms each, and that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country. Paragraph (4)(B)(i) defines a "United States vessel" for purposes of paragraph (4)(A) as a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46 of the United States Code. Paragraph (4)(B)(ii) defines an "ATPDEA vessel" for purposes of paragraph (4)(A) as a vessel (1) which is registered or recorded in an ATPDEA beneficiary country, (2) which sails under the flag of an ATPDEA beneficiary country, (3) which is at least 75 percent owned by nationals of an ATPDEA beneficiary country or by a company having its principal place of business in an ATPDEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of those boards are nationals of an ATPDEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPDEA beneficiary country or by public bodies or nationals of an ATPDEA beneficiary country, (4) of which the master and officers are nationals of an ATPDEA beneficiary country, and (5) of which at least 75 percent of the crew are nationals of an ATPDEA beneficiary country.

Paragraph (5): Customs procedures

Paragraph (5) of amended section 204(b) is entitled "Customs procedures" and sets forth regulatory standards for purposes of preferential treatment under paragraph (1), (3), or (4). It includes provisions relating to import procedures, prescribes a specific factual determination that the President must make regarding the implementation of certain procedures and requirements by each ATPDEA beneficiary country, and sets forth the responsibility of Customs regarding the study of, and reporting to Congress on, cooperative and other actions taken by each ATPDEA beneficiary country to prevent transshipment and circumvention in the case of textile and apparel goods. The specific provisions under paragraph (5) that require regulatory treatment in this document are the following:

1. Paragraph (5)(A)(i) provides that any importer that claims preferential treatment under paragraph (1), (3), or (4) must comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury. The NAFTA provision referred to in paragraph (5)(A)(i) concerns the use of a Certificate of Origin and specifically requires that the

importer (1) make a written declaration, based on a valid Certificate of Origin, that the imported good qualifies as an originating good, (2) have the Certificate in its possession at the time the declaration is made, (3) provide the Certificate to Customs on request, and (4) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate on which a declaration was based contains information that is not correct.

2. Paragraph (5)(B) provides that the Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (5)(A)(i) will not be required in the case of an article imported under paragraph (1), (3), or (4) if that Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico. Article 503 of the NAFTA sets forth, with one general exception, three specific circumstances in which a NAFTA country may not require a Certificate of Origin.

Paragraph (6): Definitions

Paragraph (6) of amended section 204(b) sets forth a number of definitions that apply for purposes of section 204(b). These definitions include, in paragraph (6)(B), a definition of "ATPDEA beneficiary country" as any "beneficiary country," as defined in section 203(a)(1) of the ATPA, which the President designates as an ATPDEA beneficiary country, taking into account the criteria contained in sections 203(c) and (d) and other appropriate criteria, including those specified under new paragraph (6)(B) of amended section 204(b).

On October 31, 2002, the President signed Proclamation 7616 (published in the Federal Register at 67 FR 67283 on November 5, 2002) to implement the new trade benefit provisions of section 3103 of the Act. The Annex to that Proclamation set forth a number of modifications to the HTSUS to accommodate the ATPDEA program, and those HTSUS changes were also the subject of a technical corrections document prepared by the Office of the United States Trade Representative and published in the Federal Register (67 FR 79954) on December 31, 2002.

This document sets forth, on an interim basis, amendments to the Customs Regulations to implement those new trade benefit provisions and to conform the existing ATPA implementing regulations to those statutory changes. These regulatory changes are discussed below.

SECTION-BY-SECTION DISCUSSION OF INTERIM AMENDMENTS

Sections 10.201 and 10.202 and removal of § 10.208

In the existing ATPA implementing regulations, § 10.208 is removed in order to reflect the removal of paragraph (c) from section 204 of the ATPA, the cross-reference in the introductory text of § 10.202 is modified to reflect that removal, and § 10.201 is revised to reflect the removal of that reduced-duty provision and to refer to new §§ 10.241–10.248 and 10.251–10.257 discussed below. In addition, paragraph (b) of § 10.202 is amended by recasting the list of articles excluded from the ATPA to reflect the terms of paragraph (2) of amended section 204(b); the articles

listed in paragraph (1) of amended section 204(b) are dealt with in new §§ 10.251–10.257.

New §§ 10.241 through 10.248

New §§ 10.241 through 10.248 are intended to implement those apparel and other textile article preferential treatment provisions within paragraphs (3), (5) and (6) of amended section 204(b) of the ATPA statute that relate to U.S. import procedures.

Section 10.241 outlines the statutory context for the new sections and is self-explanatory.

Section 10.242 sets forth definitions for various terms used in the new regulatory provisions. The following points are noted regarding these definitions:

1. The definition of "apparel articles," by referring to goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99.15 and 6505.90 of the HTSUS, is intended to reflect the scope of apparel under the Agreement on Textiles and Clothing annexed to the WTO Agreement and referred to in 19 U.S.C. 3511(d)(4).

2. The definition of "assembled" and "sewn or otherwise assembled" in the context of production in one or more ATPDEA beneficiary countries is based in part on the definition of "wholly assembled" in § 102.21(b)(6) of the Customs Regulations (19 CFR 102.21(b)(6)). However, the definition also allows a prior partial assembly in the United States, consistent with the overall structure of the ATPDEA as reflected in the types of operations allowed under the program.

3. The definition of "ATPDEA beneficiary country" is an adaptation of, and for purposes of this context is consistent with, the definition contained in section 204(b)(6)(B).

4. The definition of "chief value" is based in part on a definition of that term which appeared in the General Headnotes to the Tariff Schedules of the United States (TSUS), the predecessor to the HTSUS, and also relies on the concept of "value" used for purposes of the finding, trimmings, and interlinings provisions discussed below in connection with § 10.243(c).

5. The definition of "cut" in the context of production in one or more ATPDEA beneficiary countries provides that all fabric components used in the assembly of an article must be cut in ATPDEA beneficiary countries except where cutting and partial assembly takes place in the United States prior to cutting and assembly in the beneficiary countries. The exception in the case of the United States was included to ensure consistency with the definition of "assembled" and "sewn and assembled" discussed above (which, by allowing a partial assembly in the United States, implies that some cutting also will take place in the United States prior to the partial assembly).

6. The definition of "luggage" is based on the definition contained in the headnotes of Subpart D of Schedule 7 of the TSUS (the current HTSUS contains no definition of luggage).

7. The definition of "NAFTA" reflects the definition contained in section 204(b)(6)(C) of the ATPA.

8. The expression "wholly formed" is dealt with in three definitions, one with reference to yarns and another with reference to fabrics and the third with reference to fabric components, because each of these terms is modified by "wholly formed" in one or more provisions of the statute that specify production processes that must be performed in the United States or ATPDEA beneficiary countries. These definitions are intended to ensure that all processes essential for yarn, fabric, and fabric component formation are performed in the United States or ATPDEA beneficiary countries. The following additional points are noted regarding these three definitions:

a. The definition that relates to fabric(s) is based in part on the definition of "fabric-making process" in § 102.21(b)(2) of the Customs Regulations (19 CFR 102.21(b)(2)), and a similar approach is used in the definition that relates to yarns. The definition that relates to fabric components requires both formation of the fabric and formation of the component from that fabric.

b. The definition of "wholly formed" yarns includes references to "drawing to fully orient a filament" and to ending with a yarn or "plied yarn." The first reference concerns a production process, draw-texturing, that is applied to partially oriented yarn (POY) in order to fully orient the filament yarn and thus render it suitable for use as a yarn; Customs believes that a filament that requires draw-texturing cannot be considered to be "wholly formed" until that process is completed. The reference to ending with a "plied yarn" reflects the position of Customs that a yarn is completed, that is, "wholly formed," only when it is in the form in which it will be used as a yarn to produce a textile product (for example, a fabric or a knit-to-shape component); thus, a single ply yarn that will be joined with other single ply yarns to create a plied yarn is not wholly formed until the plying procedure is completed.

c. Except in the case of yarns, each definition refers to various production processes that "took place in a single country." A different approach is taken in the case of yarns because in several instances the article descriptions in the ATPDEA statutory and regulatory texts expressly refer to yarns wholly formed *in one or more ATPDEA beneficiary countries*. Thus, the "wholly formed yarns" definition refers to production processes that took place "in the United States or in one or more ATPDEA beneficiary countries" in order to allow for the sharing of yarn production processes among multiple beneficiary countries. For example, in the case of a single yarn formed in one beneficiary country and plied with other yarns in a second beneficiary country, or in the case of POY extruded in one beneficiary country and draw-textured in a second beneficiary country, the plied yarn and the draw-textured yarn would meet the "wholly formed" standard for yarns under the ATPDEA program.

Section 10.243 identifies the articles to which preferential treatment applies under paragraph (3) of amended section 204(b). Paragraph (a) identifies the various groups of apparel and other textile articles described under paragraph (3)(B) of the statute and includes in the introductory text an "imported directly" requirement, consistent with the terms of the statute. Paragraph (b) sets forth rules regarding dyeing, printing, finishing, and other operations. Paragraph (c) covers the special rules contained in paragraph (3)(B)(vi) of the statute involving findings and trimmings and interlinings of foreign origin, the *de minimis* rule for yarns, and the rule for nylon filament yarn. Paragraph (d) explains what is meant by "imported directly." The following specific points are noted regarding these regulatory texts:

1. Paragraph (a)(1) covers the various groups of apparel articles specified in paragraphs (3)(B)(i) and (3)(B)(ii) of the statute for preferential treatment individually (rather than in combination). Paragraph (a)(1)(i) corresponds to paragraph (3)(B)(i)(I) of the statute; paragraph (a)(1)(ii) corresponds to paragraph (3)(B)(i)(II) of the statute; paragraph (a)(1)(iii) corresponds to paragraph (3)(B)(i)(III) of the statute; and paragraph (a)(1)(iv) corresponds to paragraph (3)(B)(ii) of the statute. The following additional points are noted regarding these paragraph (a)(1) texts:

a. The regulatory text in paragraph (a)(1)(i) includes the provision in paragraph (3)(B)(i)(I) of the statute that any dyeing, printing, or finishing of knit or woven fabrics must take place in the United States. However, the regulatory text in this context refers to knitted "or crocheted" fabrics, in order to reflect tariff and trade usage, and also includes a reference to "fabric components produced from fabric" in order to (1) reflect the fact that apparel articles are most often assembled from apparel components rather than from fabrics and (2) clarify the Customs position that knitting to shape does not create a fabric but rather results in the creation of a component that is ready for assembly without having gone through a fabric stage.

b. The regulatory text in paragraph (a)(1)(ii) refers to llama, alpaca, "and/or" vicuña in order to ensure, consistent with what Customs believes is the intent, that these three materials may be present either singly or in combination with each other (for example, as a blend) for purposes of the chief value concept. It should also be noted that imported products containing vicuña are subject to specific admissibility requirements under regulations administered by the Fish and Wildlife Service of the U.S. Department of the Interior; those regulations, set forth in 50 CFR Part 17, were recently amended by a final rule document published in the Federal Register (67 FR 37695) on May 30, 2002, and questions regarding the admissibility of vicuña products under those regulations should be directed to the Fish and Wildlife Service.

c. Paragraph (a)(1)(iii) covers fabrics and yarns that are considered to be in "short supply" for purposes of Annex 401 of the NAFTA (that is, the fabrics or yarns are not required to be originating within the mean-

ing of the NAFTA, if those fabrics or yarns undergo the specified tariff shift for that article and that article meets all other applicable requirements for an originating good). For example, sweaters of wool classified under subheading 6110.11.00 of the HTSUS that are knit to shape in a NAFTA country from 40 percent non-originating silk yarn and 60 percent originating wool yarn may qualify as originating goods because a tariff shift from silk yarn is allowed by the applicable tariff shift rule, but sweaters knit to shape from 40 percent originating silk yarn and 60 percent non-originating wool yarn will not qualify as originating goods because the non-originating wool yarn is classified under a heading (5106) from which a tariff shift is not allowed. The paragraph (a)(1)(iii) text also includes a parenthetical exclusion reference regarding articles classifiable under subheading 6212.10 of the HTSUS (that is, brassieres, which are specially treated in paragraph (3)(B)(v)(I) of the statute and paragraph (a)(4) of § 10.243 as discussed below). This exclusion language is necessary in order to avoid rendering meaningless the additional requirements that apply to brassieres under the statute (which are covered by § 10.248 as discussed below). Customs notes in this regard that the NAFTA Annex 401 rule for articles classified in subheading 6212.10 of the HTSUS requires only the performance of certain specified production processes (that is, "both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties") and includes no requirements regarding the source of the fabrics or yarns. There is little logic in applying the short supply provision to a product where the NAFTA rule makes no mention of excluded materials. Thus, Customs believes that brassieres of subheading 6212.10, HTSUS, are not covered by paragraph (3)(B)(i)(III) of the statute and § 10.243(a)(1)(iii) of the regulations.

2. Paragraph (a)(2) covers combinations of two or more of the various groups of apparel articles specified in paragraphs (3)(B)(i) and (3)(B)(ii) of the statute. The regulatory text uses the words "*exclusively* from a combination of * * *" in order to clarify the distinction between the combinations allowed under this provision and those allowed under the paragraph (a)(7) text discussed below.

3. Paragraph (a)(3) covers the handloomed, handmade, and folklore articles specified in paragraph (3)(B)(iv) of the statute.

4. Paragraph (a)(4) covers the apparel articles referred to in paragraph (3)(B)(v) of the statute and refers specifically to "brassieres" in order to explain the coverage of the HTSUS provision referred to in the statute. The regulatory text here reflects only the general product description of subclause (I) of paragraph (3)(B)(v) of the statute but also includes a cross-reference to new § 10.248, discussed below, which treats in detail the 75 and 85 percent U.S.-formed fabric requirements of subclauses (II) and (III).

5. Paragraphs (a)(5) and (a)(6) cover the two types of textile luggage referred to in paragraphs (3)(B)(vii)(I) and (3)(B)(vii)(II) of the statute.

6. Paragraph (a)(7) covers the apparel articles specified in paragraph (3)(B)(iii) of the statute. The text includes a reference to articles assembled "in part but not exclusively" from any of the fabrics or components described in paragraph (a)(1). This language is intended, in combination with the use of the word "exclusively" in paragraph (a)(1), to clarify the effect of the statutory limitation in paragraph (3)(B)(iii) regarding the use of fabrics or components described in paragraph (3)(B)(i), the intent of which appears to be to ensure that there is no overlap (that is, conflict) in product coverage between the two statutory provisions at issue.

7. Paragraph (b)(1) clarifies the Customs position regarding dyeing, printing, and finishing operations. In view of the specific mention of these processes in regard to knit and woven fabrics in paragraph (3)(B)(i)(I) of the statute and § 10.243(a)(1)(i) of the regulations, Customs believes that this clarification is necessary to explain the status of these processes in other contexts under the statute and regulations. The paragraph (b)(1) text provides that these processes may be performed on any yarn or fabric or component without affecting the eligibility of an article for preferential treatment, provided that the dyeing, printing, or finishing is performed only in the United States or in an ATPDEA beneficiary country, and subject to two conditions. As regards the general limitation of these processes to the United States and ATPDEA beneficiary countries, Customs believes that this is consistent with the overall structure and intent of the ATPDEA which is to benefit U.S. and Andean textile producers. The first condition, set forth in paragraph (b)(1)(i), reflects the U.S. dyeing, printing, and finishing requirement of paragraph (3)(B)(i)(I) of the statute and paragraph (a)(1)(i) of the regulatory text as discussed above. The second condition, set forth in paragraph (b)(1)(ii), reflects the principle that in the case of assembled luggage described in paragraph (a)(5) of the regulatory text (paragraph (3)(B)(vii)(I) of the statute), an operation that is incidental to the assembly process may be performed in an ATPDEA beneficiary country. This provision reflects the terms of subheading 9802.00.80, HTSUS, and the regulations under that HTSUS provision which include, in 19 CFR 10.16(c), a list of operations not considered incidental to assembly.

8. Paragraph (b)(2) covers post-assembly and other operations (for example, embroidering, stone-washing, perma-pressing, garment-dyeing). The paragraph provides that these operations will not disqualify an otherwise eligible article from preferential treatment, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and provided that, in the case of assembled luggage described in paragraph (a)(5), the operation is incidental to the assembly process in an ATPDEA beneficiary country. This paragraph is intended to have the same clarifying effect as paragraph (b)(1) discussed above.

9. Paragraph (c)(1) is divided into three parts: paragraph (c)(1)(i) reflects the basic findings, trimmings, interlinings, and *de minimis* rules of paragraphs (3)(B)(vi)(I)–(III) of the statute; paragraph (c)(I)(ii) sets

forth definitions of the terms "cost" and "value" as used in these provisions; and paragraph (c)(1)(iii) is intended to clarify the relationship between findings and trimmings on the one hand and yarns on the other hand for purposes of applying the 25 percent by value and 7 percent by weight limitations under the statute. The following additional points are noted regarding these paragraph (c)(1) texts:

a. In the first sentence of paragraph (c)(1)(i)(A), the words "the value of" have been added after the word "if" to clarify that it is the value of the findings and trimmings that must not exceed the 25 percent level. In addition, in the second sentence of paragraph (c)(1)(i)(A), the comma appearing in the statutory text between "decorative lace" and "trim" has been removed to avoid an ambiguity between the meanings of "trimmings" and "trim." Also in the second sentence of paragraph (c)(1)(i)(A), the words "zippers, including zipper tapes and labels" in paragraph (3)(B)(vi)(I) of the statute have been replaced with the words "zippers (including zipper tapes), and labels" because there is no such thing as a "zipper label" and to ensure proper treatment of labels as findings and trimmings in their own right.

b. A separate paragraph (c)(1)(i)(C) has been included to allow a combination of findings and trimmings and interlinings up to a total of 25 percent of the cost of the components of the assembled article, because Customs believes that was the result intended by Congress by the inclusion of the words "(and any findings and trimmings)" in paragraph (3)(B)(vi)(II)(aa) of the statute.

c. The definitions of "cost" and "value" in paragraph (c)(1)(ii) are derived primarily from the regulations that apply to components and materials under subheading 9802.00.80, HTSUS (in particular, 19 CFR 10.17), and under the ATPA regulations (in particular, 19 CFR 10.206(d)(3)).

d. As regards paragraph (c)(1)(iii), Customs believes that some clarification is appropriate in this context because sometimes a yarn may be used in an article as a finding or trimming. The statute is ambiguous as to whether an article is ineligible if the total weight of all foreign yarns exceeds the 7 percent limit but the value of all foreign findings and trimmings does not exceed the 25 percent limit. Thus, the question arises as to which limitation should apply. In the absence of any guidance on this point in the relevant legislative history, Customs has concluded that the best approach is to give precedence to the findings and trimmings limitation. Thus, under paragraph (c)(1)(iii) a foreign yarn that is used in an article as a finding or trimming would be subject to the 25 percent by value limitation rather than the 7 percent by weight limitation.

10. In paragraph (c)(2), which sets forth the special rule for nylon filament yarn of paragraph (3)(B)(vi)(IV) of the statute, specific reference is made to Canada, Mexico, and Israel because those are the only countries with which the United States had a free trade agreement that entered into force before January 1, 1995.

11. The explanation of "imported directly" in paragraph (d) follows the text used in § 10.204 of the ATPA implementing regulations (19 CFR 10.204) but incorporates editorial changes to reflect an ATPDEA context.

Section 10.244 prescribes the use of a Certificate of Origin and thus reflects the regulatory mandate contained in paragraph (5)(A)(i) of amended section 204(b). Paragraph (a) of the regulatory text contains a general statement regarding the purpose and preparation of the Certificate of Origin and is based in part on § 181.11 of the implementing NAFTA regulations (19 CFR 181.11). Paragraph (b) sets forth the form for the Certificate of Origin, which is directed toward the specific groups of articles described under paragraph (3)(B) of amended section 204(b) and thus bears no substantive relationship to the Certificate of Origin used under the NAFTA (which involves different country of origin standards for preferential duty treatment). Paragraph (c) sets forth instructions for preparation of this Certificate of Origin. It should be noted that the Certificate of Origin prescribed under this section has no effect on the textile declaration prescribed under § 12.130 of the Customs Regulations (19 CFR 12.130) which still must be submitted to Customs in accordance with that section even in the case of textile products that are entitled to preferential treatment under the ATPDEA program.

Section 10.245 sets forth the procedures for filing a claim for preferential treatment. Consistent with the mandate in paragraph (5)(A)(i) of amended section 204(b) for procedures "similar in all material respects to the requirements of Article 502(1) of the NAFTA," this regulatory text is based on the NAFTA regulatory text contained in 19 CFR 181.21, but includes appropriate changes to conform to the current context.

Section 10.246 concerns the maintenance of records and submission of the Certificate of Origin by the importer and follows the NAFTA regulatory text contained in 19 CFR 181.22 but, again, with appropriate changes to conform to the current context. The following points are noted regarding the regulatory text:

1. In paragraph (a) which concerns the maintenance of records, specific reference is made to "the provisions of part 163" which set forth the basic Customs recordkeeping requirements that apply to importers and other persons involved in customs transactions. This requirement parallels the NAFTA recordkeeping requirement in § 181.22.

2. Paragraph (b) concerns submission of the Certificate of Origin to Customs and thus also relates directly to a requirement contained in Article 502(1) of the NAFTA. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(b) but differs from the NAFTA text by not specifying a 4-year period for acceptance of the Certificate by Customs, because that 4-year period is only relevant in a NAFTA context.

3. Paragraph (c) concerns the correction of defective Certificates of Origin and the nonacceptance of blanket Certificates in certain circumstances. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(c) but is simplified and does not include any reference to

NAFTA-type origin verifications which do not apply for ATPDEA purposes.

4. Paragraph (d) sets forth the circumstances in which a Certificate of Origin is not required. Consistent with the terms of paragraph (5)(B) of amended section 204(b), this regulatory text follows the terms of Article 503 of the NAFTA and the NAFTA regulatory text contained in 19 CFR 181.22(d).

Section 10.247 concerns the verification and justification of claims for preferential treatment. Paragraph (a) concerns the verification of claims by Customs and paragraph (b) prescribes steps that a U.S. importer should take in order to support a claim for preferential treatment. Although paragraph (a) is derived from provisions contained in the GSP regulations (19 CFR 10.173(c)), in the CBI regulations (19 CFR 10.198(c)), and in the ATPA regulations (19 CFR 10.207(e)), the text expands on the GSP/CBI/ATPA approach in the following respects:

1. In paragraph (a)(1), specific reference is made to the review of import-related documents required to be made, kept, and made available by importers and other persons under Part 163 of the regulations.

2. Paragraph (a)(2) sets forth examples of documents and information relating to production Customs may need to review for purposes of verifying a claim for preferential treatment.

3. Paragraph (a)(3) refers to evidence to document the use of U.S. or ATPDEA beneficiary country materials in an article, because the presence of those materials is a key element for some of the articles to which preferential treatment applies under the ATPDEA. Accordingly, U.S. importers must be aware of the fact that their ability to successfully claim preferential treatment on their imports may be a function of the nature of the records maintained, for example by an ATPDEA beneficiary country producer, not only with regard to the production process but also with regard to the source of the materials used in that production.

Section 10.248 sets forth additional requirements for preferential treatment of brassieres described in paragraph (a)(4) of § 10.243 and is directed specifically to the 75 and 85 percent U.S.-formed fabric requirements of subclauses (II) and (III) of paragraph (3)(B)(v) of amended section 204(b). The following points are noted regarding this regulatory text:

1. The definitions of "cost" and "declared customs value" in paragraphs (a)(4) and (a)(5) are based in part on principles reflected in the Customs Regulations provisions that apply for purposes of subheading 9802.00.80, HTSUS (see, in particular, 19 CFR 10.17) and under the ATPA (see, in particular, 19 CFR 10.206(d)(3)). Moreover, as regards the definition of "declared customs value" in paragraph (a)(5), Customs notes that because the circumstance in which this terminology appears in the statute does not relate to a point at which a value is normally declared to U.S. Customs, the text includes multiple factual circumstances that reflect all conditions under which a value of fabric could exist for

purposes of comparison to the "cost" (of fabrics formed in the United States) defined in paragraph (a)(4).

2. Paragraph (b)(1) reflects the 75 and 85 percent U.S. fabric content requirements of paragraphs (3)(B)(v)(II) and (III) of the statute and also requires the U.S. importer to include a specific documentation identifier assigned by Customs (see the discussion of paragraph (c) below) when filing the claim for preferential treatment. Customs considers a specific documentation identifier necessary. The following points are noted regarding this paragraph:

a. Paragraph (b)(1)(i), which concerns the 75 percent requirement of paragraph (3)(B)(v)(II) of the statute, refers to articles that are "entered as articles described in § 10.243(a)(4)," whereas paragraph (b)(1)(ii), which concerns the 85 percent requirement of paragraph (3)(B)(v)(III) of the statute, refers to articles that "conform to the production standards set forth in § 10.243(a)(4)." The difference in wording is necessary in order to enable the 85 percent standard to operate. Customs notes in this regard that if the universe of articles that are looked at for purposes of assessing compliance with the 85 percent standard is the same as that used for purposes of the 75 percent standard (that is, articles that were entered under the HTSUS subheading that applies to articles described in paragraph (3)(B)(v)(I) of the statute and § 10.243(a)(4)), it would be impossible after the end of the first year of the program (that is, after September 30, 2003) for a new producer or entity to enter the program, or for a producer or entity that failed to meet the 75 percent standard in the previous year to reenter the program. This is because application of the 85 percent standard presupposes a failure to have met the 75 percent standard in the preceding year, in which case there could not be any entries in the next year under the HTSUS subheading that applies to articles described in paragraph (3)(B)(v)(I) of the statute and § 10.243(a)(4) against which compliance with the 85 percent standard can be determined. The wording in paragraph (b)(1)(ii) of the regulatory text, by referring to articles that meet the U.S./Andean cutting and assembly production requirement (regardless of the HTSUS subheading under which they are entered), is intended to avoid this anomalous result.

b. The specific identifier, which is to be noted on the entry summary or warehouse withdrawal, will serve both the importer and Customs. The identifier serves the importer as it is a method to indicate that the importer has at the time of entry a specific basis for claiming preferential treatment—that either the 75 or the 85 percent requirement has been met in the preceding year—for the brassieres being entered and thus will facilitate the entry and clearance process. The identifier serves Customs as it is a means by which Customs can tie a particular entry to the fact that a producer of brassieres or an entity controlling production of brassieres has met the 75 or 85 percent requirement. This is essential in view of the fact that compliance with the 75 or 85 percent requirement

must be established by a producer or by an entity controlling production who might not be the U.S. importer.

3. Paragraph (b)(2) sets forth a number of general rules that Customs believes apply under paragraphs (b)(1)(i) and (b)(1)(ii) and for purposes of preparing and filing the documentation prescribed under paragraph (c) by the producer or entity controlling production. Paragraph (b)(2) also includes some examples to illustrate the application of those rules.

4. Paragraph (c) provides that, in order for an importer to be able to include the distinct and unique identifier on the entry summary or warehouse withdrawal as required under paragraph (b)(1)(iii), the producer or entity controlling production must have filed with Customs a declaration of compliance with the applicable 75 or 85 percent requirement. Paragraph (c) further provides that Customs will advise the filer of the identifier assigned to that declaration of compliance so that the filer may provide that number to the appropriate U.S. importers for inclusion on current entry summaries or warehouse withdrawals covering articles of the producer or entity controlling production in question. So that each affected importer might know what the appropriate identifier is prior to the arrival of the goods in the United States, paragraph (c) provides that the declaration of compliance should be filed at least 10 days prior to the date of the first shipment of the goods to the United States; Customs believes that this 10-day period should afford sufficient time for Customs to assign the identifier to the declaration of compliance and provide the identifier to the producer or entity controlling production and for the producer or entity to then provide it to the appropriate U.S. importer(s). Paragraph (c) also provides for the filing of an amended declaration of compliance or for following other appropriate procedures if the initial filing was based on an estimate because information for the whole year was not available at the time of the initial filing and the final data differs from the estimate, or if the producer or entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information. Finally, paragraph (c) identifies the specific Customs office at which the filing must take place and prescribes the form the declaration of compliance must take and includes instructions for its completion.

5. Paragraph (d) sets forth standards regarding the verification of a declaration of compliance and is similar to the rules that apply for purposes of verification of ATPDEA preferential treatment claims under § 10.247 but with changes to reflect the current context. Paragraph (d) also specifies the nature of the accounting books and documents that Customs expects to see when verifying the statements made on a declaration of compliance. Finally, so that affected U.S. importers will know when Customs, after performing a verification of a declaration of compliance, has determined that articles of the producer or entity controlling production in question failed to meet the applicable 75 or 85 percent

requirement, paragraph (d) provides that Customs will publish a notice of that determination in the Federal Register.

New §§ 10.251 through 10.257

New §§ 10.251 through 10.257 are intended to implement those non-textile preferential treatment provisions within paragraphs (1), (4), (5) and (6) of amended section 204(b) of the ATPA statute that relate to U.S. import procedures. In view of the similarities between paragraphs (1), (3) and (4) under the statute, in particular as regards the use of a Certificate of Origin and related Customs procedures, the structure and content of new §§ 10.251 through 10.257 are based on the structure and content used in this document for the paragraph (3) textile provisions of new §§ 10.241 through 10.247, but with appropriate changes or variations to reflect the paragraphs (1) and (4) statutory context. The following particular points are noted regarding the texts of new §§ 10.251 through 10.257:

1. In § 10.252, the definitions of "ATPDEA beneficiary country vessel" and "United States vessel" (which apply only for purposes of preferential treatment of tuna under paragraph (4) of amended section 204(b)) follow the definitions that appear in paragraph (4)(B) of the statute, except that in the first definition the words "beneficiary country" have been included within the defined term (which in the statute reads simply "ATPDEA vessel") in order to reflect the wording used in the general statutory and regulatory preferential treatment rule for tuna.

2. In § 10.253(a), which identifies the non-textile articles eligible for preferential tariff treatment, an "imported directly" requirement has been included in the introductory text to reflect the inclusion of that requirement as a condition of preferential treatment in paragraphs (1) and (4) of amended section 204(b). The remainder of § 10.253(a) reflects the terms of paragraphs (1)(A)–(D) and (4)(A) of the statute.

3. Section 10.253(b) explains the meaning of "imported directly." As in the case of new § 10.243(d) discussed above, the text here follows the text used in § 10.204 of the ATPA implementing regulations (19 CFR 10.204) but with some editorial changes to reflect an ATPDEA context.

4. Sections 10.253(c) and (d) set forth country of origin criteria and value content requirements that apply for purposes of preferential treatment for all of the non-textile articles covered by paragraph (1) of amended section 204(b), that is, all non-textile articles other than tuna to which different standards apply under paragraph (4) of the statute. Since paragraph (1) of the statute refers to "any article that * * * meets the requirements of *this section*," Customs believes that the country of origin and value content requirements that apply to ATPA beneficiary country goods under section 204(a) of the ATPA must also apply in the present context. Accordingly, the new §§ 10.253(c) and (d) texts are based on §§ 10.205 and 10.206 of the ATPA implementing regulations (19 CFR 10.205 and 10.206).

5. Sections 10.254 through 10.256 follow the basic NAFTA Certificate of Origin and preferential treatment claim filing procedures (but with

modifications to reflect the specific rules that apply under amended section 204(b) of the ATPA), including the use of a separate Customs Form for the Certificate of Origin rather than setting it out in the regulatory texts. Therefore, the § 10.254 text is considerably shorter than the text of new § 10.244 discussed above because it does not contain the text of the Certificate and the instructions for its completion.

Appendix to Part 163

Finally, this document amends Part 163 of the Customs Regulations (19 CFR Part 163) by adding to the list of entry records in the Appendix (the interim "(a)(1)(A) list") references to the ATPDEA Textile Certificate of Origin prescribed under new § 10.246, the ATPDEA Declaration of Compliance for brassieres prescribed under new § 10.248, and the ATPDEA Certificate of Origin for tuna and other non-textile articles prescribed under new § 10.256.

COMMENTS

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.5 of the Treasury Department Regulations (31 CFR 1.5), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS AND THE REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes provide trade benefits to the importing public, in some cases implement direct statutory mandates, and are necessary to carry out the preferential treatment proclaimed by the President under the Andean Trade Promotion and Drug Eradication Act. Presidential Proclamation 7616 made that preferential treatment effective with respect to goods entered, or withdrawn from warehouse for consumption, as of the date of signature, October 31, 2002, and these regulations are needed in order for importers to know how to file their claims for preferential treatment. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.) do not apply.

EXECUTIVE ORDER 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

PAPERWORK REDUCTION ACT

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515–0219.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in these interim regulations is in §§ 10.244, 10.245, 10.246, 10.248, 10.254, 10.255, and 10.256. This information conforms to requirements in 19 U.S.C. 3203 and is used by Customs to determine whether textile and apparel articles and other products imported from designated beneficiary countries are entitled to preferential treatment under the Andean Trade Promotion and Drug Eradication Act. The likely respondents are business organizations including importers, exporters, and manufacturers.

Estimated annual reporting and/or recordkeeping burden: 8,000 hours.

Estimated average annual burden per respondent/recordkeeper: 4 hours.

Estimated number of respondents and/or recordkeepers: 2,000.

Estimated annual frequency of responses: 24.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the interim regulations.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

DRAFTING INFORMATION

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS

19 CFR Part 10

Andean Trade Preference, Assembly, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

For the reasons set forth in the preamble, Parts 10 and 163, Customs Regulations (19 CFR Parts 10 and 163), are amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read, the specific authority citation for §§ 10.201 through 10.207 is revised to read, and a new specific authority citation for §§ 10.241 through 10.248 and §§ 10.251 through 10.257 is added to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * * * *

Sections 10.201 through 10.207 also issued under 19 U.S.C. 3203;

* * * * * * *

Sections 10.241 through 10.248 and §§ 10.251 through 10.257 also issued under 19 U.S.C. 3203.

2. Section 10.201 is revised to read as follows:

§ 10.201 Applicability.

Title II of Pub. L. 102–182 (105 Stat. 1233), entitled the Andean Trade Preference Act (ATPA) and codified at 19 U.S.C. 3201 through 3206, authorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country and to designate countries as beneficiary countries. The provisions of §§ 10.202 through 10.207 set forth the legal requirements and procedures that apply for purposes of obtaining that duty-free treatment for certain articles from a beneficiary country which are identified for purposes of that treatment in General Note 11, Harmonized Tariff Schedule of the United States (HTSUS), and in the "Special" rate of duty column of the HTSUS. Provisions regarding preferential treatment of apparel and other textile articles un-

der the ATPA are contained in §§ 10.241 through 10.248, and provisions regarding preferential treatment of tuna and certain other non-textile articles under the ATPA are contained in §§ 10.251 through 10.257.

3. In § 10.202, the introductory text is amended by removing the reference "10.208" and adding, in its place, the reference "10.207", and paragraph (b) is amended by removing paragraphs (b)(1) through (b)(8) and adding, in their place, new paragraphs (b)(1) through (b)(4) to read as follows:

§ 10.202 Definitions.

* * * * * * *

(b) * * *

(1) Textiles and apparel articles which were not eligible articles for purposes of the ATPA on January 1, 1994, as the ATPA was in effect on that date, except as otherwise provided in §§ 10.241 through 10.248;

(2) Rum and tafia classified in subheading 2208.40, Harmonized Tariff Schedule of the United States;

(3) Sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas; or

(4) Tuna prepared or preserved in any manner in airtight containers, except as otherwise provided in §§ 10.251 through 10.257.

* * * * * * *

4. Section 10.208 is removed.

5. Part 10 is amended by adding a new center heading followed by new §§ 10.241 through 10.248 to read as follows:

APPAREL AND OTHER TEXTILE ARTICLES UNDER THE ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT

Sec.

APPAREL AND OTHER TEXTILE ARTICLES UNDER THE ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT

§ 10.241 Applicability.

Title XXXI of Public Law 107–210 (116 Stat. 933), entitled the Andean Trade Promotion and Drug Eradication Act (ATPDEA), amended sections 202, 203, 204, and 208 of the Andean Trade Preference Act (the ATPA, 19 U.S.C. 3201–3206) to authorize the President to extend additional trade benefits to countries that are designated as beneficiary countries under the ATPA. Section 204(b)(3) of the ATPA (19 U.S.C. 3203(b)(3)) provides for the preferential treatment of certain apparel and other textile articles from those ATPA beneficiary countries which

the President designates as ATPDEA beneficiary countries. The provisions of §§ 10.241 through 10.248 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to ATPA section 204(b)(3) and Subchapter XXI, Chapter 98, HTSUS.

§ 10.242 Definitions.

When used in §§ 10.241 through 10.248, the following terms have the meanings indicated:

Apparel articles. "Apparel articles" means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99.15 and 6505.90 of the HTSUS.

Assembled or sewn or otherwise assembled in one or more ATPDEA beneficiary countries. "Assembled" and "sewn or otherwise assembled" when used in the context of production of an apparel or other textile article in one or more ATPDEA beneficiary countries has reference to a joining together of two or more components that occurred in one or more ATPDEA beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

ATPA. "ATPA" means the Andean Trade Preference Act, 19 U.S.C. 3201–3206.

ATPDEA beneficiary country. "ATPDEA beneficiary country" means a "beneficiary country" as defined in § 10.202(a) for purposes of the ATPA which the President also has designated as a beneficiary country for purposes of preferential treatment of apparel and other textile articles under 19 U.S.C. 3203(b)(3) and which has been the subject of a determination by the President or his designee, published in the Federal Register, that the beneficiary country has satisfied the requirements of 19 U.S.C. 3203(b)(5)(A)(ii).

Chief value. "Chief value" when used with reference to llama, alpaca, and vicuña means that the value of those materials exceeds the value of any other single textile material in the fabric or component under consideration, with the value in each case determined by application of the principles set forth in § 10.243(c)(1)(ii).

Cut in one or more ATPDEA beneficiary countries. "Cut" when used in the context of production of textile luggage in one or more ATPDEA beneficiary countries means that all fabric components used in the assembly of the article were cut from fabric in one or more ATPDEA beneficiary countries, or were cut from fabric in the United States and used in a partial assembly operation in the United States prior to cutting of fabric and assembly of the article in one or more ATPDEA beneficiary countries, or both.

Foreign. "Foreign" means of a country other than the United States or an ATPDEA beneficiary country.

HTSUS. "HTSUS" means the Harmonized Tariff Schedule of the United States.

Knit-to-shape components. "Knit-to-shape," when used with reference to textile components, means components that are knitted or crocheted from a yarn directly to a specific shape containing a self-start edge. Minor cutting or trimming will not affect the determination of whether a component is "knit-to-shape."

Luggage. "Luggage" means travel goods (such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel) and brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (for example, physicians' cases, sample cases), and like containers and cases designed to be carried with the person. The term "luggage" does not include handbags (that is, pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls). The term "luggage" also does not include flat goods (that is, small flatware designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change cases, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles).

NAFTA. "NAFTA" means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Preferential treatment. "Preferential treatment" means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels as provided in 19 U.S.C. 3203(b)(3).

Wholly formed fabric components. "Wholly formed," when used with reference to fabric components, means that all of the production processes, starting with the production of wholly formed fabric and ending with a component that is ready for incorporation into an apparel article, took place in a single country.

Wholly formed fabrics. "Wholly formed," when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in a single country.

Wholly formed yarns. "Wholly formed," when used with reference to yarns, means that all of the production processes, starting with the extrusion of filament, strip, film, or sheet and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a yarn or plied yarn, took

place in the United States or in one or more ATPDEA beneficiary countries.

§ 10.243 Articles eligible for preferential treatment.

(a) *General*. Subject to paragraphs (b) and (c) of this section, preferential treatment applies to the following apparel and other textile articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country:

(1) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from any one of the following:

(i) Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in the United States), provided that, if the apparel article is assembled from knitted or crocheted or woven wholly formed fabrics or from knitted or crocheted or woven wholly formed fabric components produced from fabric, all dyeing, printing, and finishing of that knitted or crocheted or woven fabric or component was carried out in the United States;

(ii) Fabrics or fabric components formed, or components knit-to-shape, in one or more ATPDEA beneficiary countries from yarns wholly formed in one or more ATPDEA beneficiary countries, if those fabrics (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries) or components are in chief value of llama, alpaca, and/or vicuña;

(iii) Fabrics or yarns, provided that apparel articles (except articles classifiable under subheading 6212.10 of the HTSUS) of those fabrics or yarns would be considered an originating good under General Note 12(t), HTSUS, if the apparel articles had been imported directly from Canada or Mexico; or

(iv) Fabrics or yarns that the President or his designee has designated in the Federal Register as fabrics or yarns that cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(2) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from a combination of fabrics, fabric components, knit-to-shape components or yarns described in two or more of paragraphs (a)(1)(i) through (a)(1)(iv) of this section;

(3) A handloomed, handmade, or folklore apparel or other textile article of an ATPDEA beneficiary country that the President or his designee and representatives of the ATPDEA beneficiary country mutually agree is a handloomed, handmade, or folklore article and that is certified as a handloomed, handmade, or folklore article by the competent authority of the ATPDEA beneficiary country;

(4) Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or in one or more ATPDEA beneficiary countries, or in both, other than articles entered as articles described in paragraphs (a)(1) through (a)(3) and (a)(7) of this section, and provided that any applicable additional requirements set forth in § 10.248 are met;

(5) Textile luggage assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS;

(6) Textile luggage assembled in one or more ATPDEA beneficiary countries from fabric cut in one or more ATPDEA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States; and

(7) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed, or from components knit-to-shape, in one or more ATPDEA beneficiary countries from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries), including apparel articles sewn or otherwise assembled in part but not exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (a)(1) of this section.

(b) *Dyeing, printing, finishing and other operations*—(1) *Dyeing, printing and finishing operations*. Dyeing, printing, and finishing operations may be performed on any yarn, fabric, or knit-to-shape or other component used in the production of any article described under paragraph (a) of this section without affecting the eligibility of the article for preferential treatment, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and not in any other country and subject to the following additional conditions:

(i) In the case of an article described in paragraph (a)(1), (a)(2), or (a)(7) of this section that contains a knitted or crocheted or woven fabric, or a knitted or crocheted or woven fabric component produced from fabric, that was wholly formed in the United States from yarns wholly formed in the United States, any dyeing, printing, or finishing of that knitted or crocheted or woven fabric or component must have been carried out in the United States; and

(ii) In the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country only if that operation is incidental to the assembly process within the meaning of § 10.16.

(2) *Other operations*. An article described under paragraph (a) of this section that is otherwise eligible for preferential treatment will not be disqualified from receiving that treatment by virtue of having under-

gone one or more operations such as embroidering, stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing or screen printing, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and not in any other country. However, in the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country without affecting the eligibility of the article for preferential treatment only if it is incidental to the assembly process within the meaning of § 10.16.

(c) *Special rules for certain component materials*—(1) *Foreign findings, trimmings, interlinings, and yarns*—(i) *General*. An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.241 because the article contains:

(A) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section "findings and trimmings" include, but are not limited to, sewing thread, hooks and eyes, snaps, buttons, "bow buds," decorative lace trim, elastic strips, zippers (including zipper tapes), and labels;

(B) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section "interlinings" include only a chest type plate, a "hymo" piece, or "sleeve header," of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(C) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(D) Yarns not wholly formed in the United States or in one or more ATPDEA beneficiary countries if the total weight of all those yarns is not more than 7 percent of the total weight of the article.

(ii) *"Cost" and "value" defined*. The "cost" of components and the "value" of findings and trimmings or interlinings referred to in paragraph (c)(1)(i) of this section means:

(A) The price of the components, findings and trimmings, or interlinings when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the components, findings and trimmings, or interlinings to the place of production if included in that price; or

(B) If the price cannot be determined under paragraph (c)(1)(ii)(A) of this section or if Customs finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the components, findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the components, findings and trimmings, or interlinings to the port of exportation.

(iii) *Treatment of yarns as findings or trimmings*. If any yarns not wholly formed in the United States or one or more ATPDEA beneficiary countries are used in an article as a finding or trimming described in paragraph (c)(1)(i)(A) of this section, the yarns will be considered to be a finding or trimming for purposes of paragraph (c)(1)(i) of this section.

(2) *Special rule for nylon filament yarn*. An article otherwise described under paragraph (a)(1)(i) through (iii), (a)(2), or (a)(7) of this section will not be ineligible for the preferential treatment referred to in § 10.241 because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable in subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS and that is entered free of duty from Canada, Mexico, or Israel.

(d) *Imported directly defined*. For purposes of paragraph (a) of this section, the words "imported directly" mean:

(1) Direct shipment from any ATPDEA beneficiary country to the United States without passing through the territory of any country that is not an ATPDEA beneficiary country;

(2) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not an ATPDEA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.244 Certificate of Origin.

(a) *General*. A Certificate of Origin must be employed to certify that an apparel or other textile article being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.241. The Certificate of Origin must be prepared by the exporter in the ATPDEA beneficiary country in the format specified in paragraph (b) of this section. Where the ATPDEA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(1) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

(b) *Form of Certificate*. The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT
TEXTILE CERTIFICATE OF ORIGIN

1. Exporter Name & Address:	3. Importer Name & Address:
2. Producer Name & Address:	
4. Description of Article:	
5. Preference Group:	

Group	Each description below is only a summary of the cited CFR provision.	19 CFR
A.	Apparel assembled from U.S. formed, dyed, printed and finished fabrics or fabric components, or U.S. formed knit-to-shape components from U.S. or Andean yarns.	10.243(a)(1)(i)
B.	Apparel assembled from Andean chief value llama, alpaca or vicuña fabrics, fabric components, or knit-to-shape components, from Andean yarns.	10.243(a)(1)(ii)
C.	Apparel assembled from fabrics or yarns considered as being in short supply in the NAFTA.	10.243(a)(1)(iii)
D.	Apparel assembled from fabrics or yarns designated as not available in commercial quantities in the United States.	10.243(a)(1)(iv)
E.	Apparel assembled from a combination of two or more yarns, fabrics, fabric components, or knit-to-shape components described in preference groups A though D.	10.243(a)(2)
F.	Handloomed, handmade, or folklore textile and apparel goods.	10.243(a)(3)

Group	Each description below is only a summary of the cited CFR provision.	19 CFR
G.	Brassieres assembled in the U.S. and/or one or more Andean beneficiary countries.	10.243(a)(4)
H.	Textile luggage assembled from U.S. formed fabrics from U.S. yarns.	10.243(a)(5)&(6)
I.	Apparel assembled from Andean formed fabrics, fabric components, or knit-to-shape components from U.S. or Andean yarns, whether or not also assembled, in part, from yarns, fabrics and fabric components described in preference groups A through D.	10.243(a)(7)

6. U.S./Andean Fabric Producer Name & Address:	7. U.S./Andean Yarn Producer Name & Address:
8. Handloomed, Handmade, or Folklore Article:	9. Name of Short Supply Fabric or Yarn:

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document. I agree to maintain, and present upon request, documentation necessary to support this certificate.

10. Authorized Signature:		11. Company:
12. Name: (Print or Type)		13. Title:
14. Date: (DD/MM/YY)	15. Blanket Period From: _____ To: _____	16: Telephone: Facsimile:

(c) *Preparation of Certificate*. The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state "available to Customs upon request" in block 2. If the producer and the exporter are the same, state "same" in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) Block 4 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the

invoice number is not known, include another unique reference number such as the shipping order number;

(6) In block 5, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(7) Blocks 6 through 9 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 5;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the name of the folklore article or should state that the article is handloomed or handmade of handloomed fabric;

(11) Block 9 should be completed if the article described in block 4 incorporates a fabric or yarn described in preference group C or D and should state the name of the fabric or yarn that has been considered as being in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States. Block 9 also should be completed if preference group E or I applies to the article described in block 4 and the article incorporates a fabric or yarn described in preference group C or D;

(12) Block 10 must contain the signature of the exporter or of the exporter's authorized agent having knowledge of the relevant facts;

(13) Block 14 should reflect the date on which the Certificate was completed and signed;

(14) Block 15 should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 4 that are imported into the United States during a specified period of up to one year (see § 10.246(b)(4)(ii)). The "from" date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 14). The "to" date is the date on which the blanket period expires; and

(15) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

§ 10.245 Filing of claim for preferential treatment.

(a) *Declaration*. In connection with a claim for preferential treatment for an apparel or other textile article described in § 10.243, the importer must make a written declaration that the article qualifies for that treatment. The inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.246(d)(1), the declaration required under this paragraph must be based on a Certificate of Origin that has been completed and properly executed in accordance with § 10.244, that covers the article being imported, and that is in the possession of the importer.

(b) *Corrected declaration*. If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

§ 10.246 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records*. Each importer claiming preferential treatment for an article under § 10.245 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include a copy of the Certificate of Origin referred to in § 10.245(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate*. An importer who claims preferential treatment on an apparel or other textile article under § 10.245(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be in writing or must be transmitted electronically through any electronic data interchange system authorized by Customs for that purpose;

(2) If in writing, must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.244(c)(14), "identical articles" means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate*. If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection

with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General*. Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

> I hereby certify that the article covered by this shipment qualifies for preferential treatment under the ATPDEA.
>
> Check One:
>
> ( ) Producer
> ( ) Exporter
> ( ) Importer
> ( ) Agent
>
> _____
> Name
>
> _____
> Title
>
> _____
> Address
>
> _____
> Signature and Date

(2) *Exception*. If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.244 through 10.246, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a "series of importations" means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.247 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs*. A claim for preferential treatment made under § 10.245, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.246, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. or ATPDEA beneficiary country materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements*. In order to make a claim for preferential treatment under § 10.245, the importer:

(1) Must have records that explain how the importer came to the conclusion that the apparel or other textile article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.243(a). If the importer is claiming that the article incorporates fabric or yarn that was wholly formed in the United States or in an ATPDEA beneficiary country, the importer must have records that identify the producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.244(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificates of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the ATPDEA beneficiary country to the United States. If the imported article was shipped through a country other than an ATPDEA beneficiary country and the invoices and other documents from the ATPDEA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.243(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through

(b)(3) of this section justify the importer's claim for preferential treatment.

§ 10.248 Additional requirements for preferential treatment of brassieres.

(a) *Definitions*. When used in this section, the following terms have the meanings indicated:

(1) *Producer*. "Producer" means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in an ATPDEA beneficiary country.

(2) *Entity controlling production*. "Entity controlling production" means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in an ATPDEA beneficiary country through a contractual relationship or other indirect means.

(3) *Fabrics formed in the United States*. "Fabrics formed in the United States" means fabrics that were produced by a weaving, knitting, needling, tufting, felting, entangling or other fabric-making process performed in the United States.

(4) *Cost*. "Cost" when used with reference to fabrics formed in the United States means:

(i) The price of the fabrics when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(B) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the fabrics to the place of production if included in that price; or

(ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if Customs finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the fabrics, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in forming the fabrics) and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabrics to the port of exportation.

(5) *Declared customs value*. "Declared customs value" when used with reference to fabric contained in an article means the sum of:

(i) The cost of fabrics formed in the United States that the producer or entity controlling production can verify; and

(ii) The cost of all other fabric contained in the article, exclusive of all findings and trimmings, determined as follows:

(A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out

in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price, but less the freight, insurance, packing, and other costs incurred in transporting the fabric to the place of production if included in that price;

(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(ii)(A) of this section or if Customs finds that cost to be unreasonable, all reasonable expenses incurred in the growth, production, or manufacture of the fabric, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in the growth, production, or manufacture of the fabric), general expenses and embroidering and dyeing, printing, and finishing expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric to the port of exportation;

(C) In the case of fabric components purchased by the producer or entity controlling production, the f.o.b. port of exportation price of those fabric components as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, and less the freight, insurance, packing, and other costs incurred in transporting the fabric components to the place of production if included in that price; and

(D) In the case of fabric components for which a fabric cost cannot be determined under paragraph (a)(5)(ii)(C) of this section or if Customs finds that cost to be unreasonable: all reasonable expenses incurred in the growth, production, or manufacture of the fabric components, including the cost or value of materials (which does not include the cost of

recoverable scrap generated in the growth, production, or manufacture of the fabric components) and general expenses, but excluding the cost or value of any non-textile materials, and excluding expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric components to the port of exportation.

(6) *Year.* "Year" means a 12-month period beginning on October 1 and ending on September 30 but does not include any 12-month period that began prior to October 1, 2002.

(7) *Entered.* "Entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(b) *Limitations on preferential treatment*—(1) *General.* During the year that begins on October 1, 2003, and during any subsequent year, articles of a producer or an entity controlling production that conform to the production standards set forth in § 10.243(a)(4) will be eligible for preferential treatment only if:

(i) The aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.243(a)(4) during the immediately preceding year was at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.243(a)(4) during that year; or

(ii) In a case in which the 75 percent requirement set forth in paragraph (b)(1)(i) of this section was not met during a year and therefore those articles of that producer or that entity controlling production were not eligible for preferential treatment during the following year, the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.243(a)(4) and that were entered during the immediately preceding year was at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.243(a)(4) and that were entered during that year; and

(iii) In conjunction with the filing of the claim for preferential treatment under § 10.245, the importer records on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, column 34), or its electronic equivalent, the distinct and unique identifier assigned by Customs to the applicable documentation prescribed under paragraph (c) of this section.

(2) *Rules of application*—(i) *General*. For purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section and for purposes of preparing and filing the documentation prescribed in paragraph (c) of this section, the following rules will apply:

(A) The articles in question must have been produced in the manner specified in § 10.243(a)(4) and the articles in question must be entered within the same year;

(B) Articles that are exported to countries other than the United States and are never entered are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(C) Articles that are entered under an HTSUS subheading other than the HTSUS subheading which pertains to articles described in § 10.243(a)(4) are not to be considered in determining compliance with the 75 percent standard specified in paragraph (b)(1)(i) of this section;

(D) For purposes of determining compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section, all articles that conform to the production standards set forth in § 10.243(a)(4) must be considered, regardless of the HTSUS subheading under which they were entered;

(E) Fabric components and fabrics that constitute findings or trimmings are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(F) Beginning October 1, 2003, in order for articles to be eligible for preferential treatment in a given year, a producer of, or entity controlling production of, those articles must have met the 75 percent standard specified in paragraph (b)(1)(i) of this section during the immediately preceding year. If articles of a producer or entity controlling production fail to meet the 75 percent standard specified in paragraph (b)(1)(i) of this section during a year, articles of that producer or entity controlling production:

(*1*) Will not be eligible for preferential treatment during the following year;

(*2*) Will remain ineligible for preferential treatment until the year that follows a year in which articles of that producer or entity controlling production met the 85 percent standard specified in paragraph (b)(1)(ii) of this section; and

(*3*) After the 85 percent standard specified in paragraph (b)(1)(ii) of this section has been met, will again be subject to the 75 percent standard specified in paragraph (b)(1)(i) of this section during the following year for purposes of determining eligibility for preferential treatment in the next year.

(G) A new producer or new entity controlling production, that is, a producer or entity controlling production who did not produce or control production of articles that were entered as articles described in § 10.243(a)(4) during the immediately preceding year, must first estab-

lish compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section as a prerequisite to preparation of the declaration of compliance referred to in paragraph (c) of this section;

(H) A declaration of compliance prepared by a producer or by an entity controlling production must cover all production of that producer or all production that the entity controls for the year in question;

(I) A producer would not prepare a declaration of compliance if all of its production is covered by a declaration of compliance prepared by an entity controlling production;

(J) In the case of a producer, the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section and the declaration of compliance procedure under paragraph (c) of this section apply to all articles of that producer for the year in question, even if some but not all of that production is also covered by a declaration of compliance prepared by an entity controlling production;

(K) The U.S. importer does not have to be the producer or the entity controlling production who prepared the declaration of compliance; and

(L) The exclusion references regarding findings and trimmings in paragraph (b)(1)(i) and paragraph (b)(1)(ii) of this section apply to all findings and trimmings, whether or not they are of foreign origin.

(ii) *Examples*. The following examples will illustrate application of the principles set forth in paragraph (b)(2)(i) of this section.

Example 1. An ATPDEA beneficiary country producer of articles that meet the production standards specified in § 10.243(a)(4) in the first year sends 50 percent of that production to ATPDEA region markets and the other 50 percent to the U.S. market; the cost of the fabrics formed in the United States equals 100 percent of the value of all of the fabric in the articles sent to the ATPDEA region and 60 percent of the value of all of the fabric in the articles sent to the United States. Although the cost of fabrics formed in the United States is more than 75 percent of the value of all of the fabric used in all of the articles produced, this producer could not prepare a valid declaration of compliance because the articles sent to the United States did not meet the minimum 75 percent standard.

Example 2. A producer sends to the United States in the first year three shipments of articles that meet the description in § 10.243(a)(4); one of those shipments is entered under the HTSUS subheading that covers articles described in § 10.243(a)(4), the second shipment is entered under the HTSUS subheading that covers articles described in § 10.243(a)(7), and the third shipment is entered under subheading 9802.00.80, HTSUS. In determining whether the minimum 75 percent standard has been met in the first year for purposes of entry of articles under the HTSUS subheading that covers articles described in § 10.243(a)(4) during the following (that is, second) year, consideration must be restricted to the articles in the first shipment and therefore must not include the articles in the second and third shipments.

Example 3. A producer in the second year begins production of articles that conform to the production standards specified in § 10.243(a)(4); some of those articles are entered in that year under HTSUS subheading 6212.10 and others under HTSUS subheading 9802.00.80 but none are entered in that year under the HTSUS subheading which pertains to articles described in § 10.243(a)(4) because the 75 percent standard had not been met in the preceding (that is, first) year. In this case the 85 percent standard applies, and all of the articles that were entered under the various HTSUS provisions in the second year must be taken into account in determining whether that 85 percent standard has been met. If the 85 percent was met in the aggregate for all of the articles entered in the second year, in the next (that is, third) year articles of that producer may receive preferential treatment under the HTSUS subheading which pertains to articles described in § 10.243(a)(4).

Example 4. An entity controlling production of articles that meet the description in § 10.243(a)(4) buys for the U.S., Canadian and Mexican markets; the articles in each case are first sent to the United States where they are entered for consumption and then placed in a commercial warehouse from which they are shipped to various stores in the United States, Canada and Mexico. Notwithstanding the fact that some of the articles ultimately ended up in Canada or Mexico, a declaration of compliance prepared by the entity controlling production must cover all of the articles rather than only those that remained in the United States because all of those articles had been entered for consumption.

Example 5. Fabric is cut and sewn in the United States with other U.S. materials to form cups which are joined together to form brassiere front subassemblies in the United States, and those front subassemblies are then placed in a warehouse in the United States where they are held until the following year; during that following year all of the front subassemblies are shipped to an ATPDEA beneficiary country where they are assembled with elastic strips and labels produced in an Asian country and other fabrics, components or materials produced in the ATPDEA beneficiary country to form articles that meet the production standards specified in § 10.243(a)(4) and that are then shipped to the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 or 85 percent standard, the fabric in the elastic strips and labels is to be disregarded entirely because the strips and labels constitute findings or trimmings for purposes of this section, and all of the fabric in the front subassemblies is countable because it was all formed in the United States and used in the production of articles that were entered in the same year.

Example 6. An ATPDEA beneficiary country producer's entire production of articles that meet the description in § 10.243(a)(4) is sent to a U.S. importer in two separate shipments, one in February and the other in June of the same calendar year; the articles shipped in February do not meet the minimum 75 percent standard, the articles shipped in June exceed the 85 percent standard, and the articles in the two shipments,

taken together, do meet the 75 percent standard; the articles covered by the February shipment are entered for consumption on March 1 of that calendar year, and the articles covered by the June shipment are placed in a Customs bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of that calendar year. The ATPDEA beneficiary country producer may not prepare a valid declaration of compliance covering the articles in the first shipment because those articles did not meet the minimum 75 percent standard and because those articles cannot be included with the articles of the second shipment on the same declaration of compliance since they were entered in a different year. However, the ATPDEA beneficiary country producer may prepare a valid declaration of compliance covering the articles in the second shipment because those articles did meet the requisite 85 percent standard which would apply for purposes of entry of articles in the following year.

Example 7. A producer in the second year begins production of articles exclusively for the U.S. market that meet the production standards specified in § 10.243(a)(4), but the entered articles do not meet the requisite 85 percent standard until the third year. The producer's articles may not receive preferential treatment during the second year because there was no production (and thus there were no entered articles) in the immediately preceding (that is, first) year on which to assess compliance with the 75 percent standard. The producer's articles also may not receive preferential treatment during the third year because the 85 percent standard was not met in the immediately preceding (that is, second) year. However, the producer's articles are eligible for preferential treatment during the fourth year based on compliance with the 85 percent standard in the immediately preceding (that is, third) year.

Example 8. An entity controlling production (Entity A) uses five ATPDEA beneficiary country producers (Producers 1–5), all of which produce only articles that meet the description in § 10.243(a)(4); Producers 1–4 send all of their production to the United States and Producer 5 sends 10 percent of its production to the United States and the rest to Europe; Producers 1–3 and Producer 5 produce only pursuant to contracts with Entity A, but Producer 4 also operates independently of Entity A by producing for several U.S. importers, one of which is an entity controlling production (Entity B) that also controls all of the production of articles of one other producer (Producer 6) which sends all of its production to the United States. A declaration of compliance prepared by Entity A must cover all of the articles of Producers 1–3 and the 10 percent of articles of Producer 5 that are sent to the United States and that portion of the articles of Producer 4 that are produced pursuant to the contract with Entity A, because Entity A controls the production of those articles. There is no need for Producers 1–3 and Producer 5 to prepare a declaration of compliance because they have no production that is not covered by a declaration of compliance prepared by an entity controlling production. A declaration of compliance prepared by Producer 4

would cover all of its production, that is, articles produced for Entity A, articles produced for Entity B, and articles produced independently for other U.S. importers; a declaration of compliance prepared by Entity B must cover that portion of the production of Producer 4 that it controls as well as all of the production of Producer 6 because Entity B also controls all of the production of Producer 6. Producer 6 would not prepare a declaration of compliance because all of its production is covered by the declaration of compliance prepared by Entity B.

(c) *Documentation*—(1) *Initial declaration of compliance*. In order for an importer to comply with the requirement set forth in paragraph (b)(1)(iii) of this section, the producer or the entity controlling production must have filed with Customs, in accordance with paragraph (c)(4) of this section, a declaration of compliance with the applicable 75 or 85 percent requirement prescribed in paragraph (b)(1)(i) or (b)(1)(ii) of this section. After filing of the declaration of compliance has been completed, Customs will advise the producer or the entity controlling production of the distinct and unique identifier assigned to that declaration. The producer or the entity controlling production will then be responsible for advising each appropriate U.S. importer of that distinct and unique identifier for purposes of recording that identifier on the entry summary or warehouse withdrawal. In order to provide sufficient time for advising the U.S. importer of that distinct and unique identifier prior to the arrival of the articles in the United States, the producer or the entity controlling production should file the declaration of compliance with Customs at least 10 calendar days prior to the date of the first shipment of the articles to the United States.

(2) *Amended declaration of compliance*. If the information on the declaration of compliance referred to in paragraph (c)(1) of this section is based on an estimate because final year-end information was not available at that time and the final data differs from the estimate, or if the producer or the entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information, within 30 calendar days after the final year-end information becomes available or within 30 calendar days after the date of discovery of the error:

(i) The producer or the entity controlling production must file with the Customs office identified in paragraph (c)(4) of this section an amended declaration of compliance containing that final year-end information or other corrected information; or

(ii) If that final year-end information or other corrected information demonstrates noncompliance with the applicable 75 or 85 percent requirement, the producer or the entity controlling production must in writing advise both the Customs office identified in paragraph (c)(4) of this section and each appropriate U.S. importer of that fact.

(3) *Form and preparation of declaration of compliance*—(i) *Form*. The declaration of compliance referred to in paragraph (c)(1) of this section

may be printed and reproduced locally and must be in the following format:

<table>
<tr><td colspan="2">Andean Trade Promotion and Drug Eradication Act
Declaration of Compliance for Brassieres
(19 CFR 10.243(a)(4) and 10.248)</td></tr>
<tr><td>1. Year beginning date: October 1, _____.
Year ending date: September 30, _____.</td><td>Official U.S. Customs Use Only
Assigned number: _____
Assignment date: _____</td></tr>
<tr><td colspan="2">2. Identity of preparer (producer or entity controlling production):

Full name and address:

Telephone number: _____
Facsimile number: _____
Importer identification number: _____</td></tr>
<tr><td colspan="2">3. If the preparer is an entity controlling production, provide the following for each producer:

Full name and address:

Telephone number: _____
Facsimile number: _____</td></tr>
<tr><td colspan="2">4. Aggregate cost of fabrics formed in the United States that were used in the production of brassieres that were entered during the year: _____</td></tr>
<tr><td colspan="2">5. Aggregate declared customs value of the fabric contained in brassieres that were entered during the year: _____</td></tr>
<tr><td colspan="2">6. I declare that the aggregate cost of fabric formed in the United States was at least 75 percent (or 85 percent, if applicable under 19 CFR 10.248(b)(1)(ii)) of the aggregate declared customs value of the fabric contained in brassieres entered during the year.</td></tr>
<tr><td>7. Authorized signature:

Date:</td><td>8. Name and title (print or type):</td></tr>
</table>

(ii) *Preparation*. The following rules will apply for purposes of completing the declaration of compliance set forth in paragraph (c)(3)(i) of this section:

(A) In block 1, fill in the year commencing October 1 and ending September 30 of the calendar year during which the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was met;

(B) Block 2 should state the legal name and address (including country) of the preparer and should also include the preparer's importer identification number (see § 24.5 of this chapter), if the preparer has one;

(C) Block 3 should state the legal name and address (including country) of the ATPDEA beneficiary country producer if that producer is not already identified in block 2. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers;

(D) Blocks 4 and 5 apply only to articles that were entered during the year identified in block 1; and

(E) In block 7, the signature must be that of an authorized officer, employee, agent or other person having knowledge of the relevant facts and

the date must be the date on which the declaration of compliance was completed and signed.

(4) *Filing of declaration of compliance*. The declaration of compliance referred to in paragraph (c)(1) of this section:

(i) Must be completed either in the English language or in the language of the country in which the articles covered by the declaration were produced. If the declaration is completed in a language other than English, the producer or the entity controlling production must provide to Customs upon request a written English translation of the declaration; and

(ii) Must be filed with the New York Strategic Trade Center, U.S. Customs Service, 1 Penn Plaza, New York, New York 10119.

(d) *Verification of declaration of compliance*—(1) *Verification procedure*. A declaration of compliance filed under this section will be subject to whatever verification Customs deems necessary. In the event that Customs for any reason is prevented from verifying the statements made on a declaration of compliance, Customs may deny any claim for preferential treatment made under § 10.245 that is based on that declaration. A verification of a declaration of compliance may involve, but need not be limited to, a review of:

(i) All records required to be made, kept, and made available to Customs by the importer, the producer, the entity controlling production, or any other person under part 163 of this chapter;

(ii) Documentation and other information regarding all articles that meet the production standards specified in § 10.243(a)(4) that were exported to the United States and that were entered during the year in question, whether or not a claim for preferential treatment was made under § 10.245. Those records and other information include, but are not limited to, work orders and other production records, purchase orders, invoices, bills of lading and other shipping documents;

(iii) Evidence to document the cost of fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records;

(iv) Evidence to document the cost or value of all fabric other than fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records; and

(v) Accounting books and documents to verify the records and information referred to in paragraphs (d)(1)(ii) through (d)(1)(iv) of this section. The verification of purchase orders, invoices and bills of lading will be accomplished through the review of a distinct audit trail. The audit trail documents must consist of a cash disbursement or purchase journal or equivalent records to establish the purchase of the fabric. The

headings in each of these journals or other records must contain the date, vendor name, and amount paid for the fabric. The verification of production records and work orders will be accomplished through analysis of the inventory records of the producer or entity controlling production. The inventory records must reflect the production of the finished article which must be referenced to the original purchase order or lot number covering the fabric used in production. In the inventory production records, the inventory should show the opening balance of the inventory plus the purchases made during the accounting period and the inventory closing balance.

(2) *Notice of determination*. If, based on a verification of a declaration of compliance filed under this section, Customs determines that the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was not met, Customs will publish a notice of that determination in the Federal Register.

6. Part 10 is amended by adding a new center heading followed by new §§ 10.251 through 10.257 to read as follows:

EXTENSION OF ATPA BENEFITS TO TUNA AND CERTAIN OTHER NON-TEXTILE ARTICLES

Sec.

EXTENSION OF ATPA BENEFITS TO TUNA AND CERTAIN OTHER NON-TEXTILE ARTICLES

§ 10.251 Applicability.

Title XXXI of Public Law 107–210 (116 Stat. 933), entitled the Andean Trade Promotion and Drug Eradication Act (ATPDEA), amended sections 202, 203, 204, and 208 of the Andean Trade Preference Act (the ATPA, 19 U.S.C. 3201–3206) to authorize the President to extend additional trade benefits to ATPA beneficiary countries that have been designated as ATPDEA beneficiary countries. Sections 204(b)(1) and (b)(4) of the ATPA (19 U.S.C. 3203(b)(1) and (b)(4)) provide for the preferential treatment of certain non-textile articles that were not entitled to duty-free treatment under the ATPA prior to enactment of the ATPDEA. The provisions of §§ 10.251–10.257 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to ATPA sections 204(b)(1) and (b)(4).

§ 10.252 Definitions.

When used in §§ 10.251 through 10.257, the following terms have the meanings indicated:

ATPA. "ATPA" means the Andean Trade Preference Act, 19 U.S.C. 3201–3206.

ATPDEA beneficiary country. "ATPDEA beneficiary country" means a "beneficiary country" as defined in § 10.202(a) for purposes of the

ATPA which the President also has designated as a beneficiary country for purposes of preferential treatment of products under 19 U.S.C. 3203(b)(1) and (b)(4) and which has been the subject of a finding by the President or his designee, published in the Federal Register, that the beneficiary country has satisfied the requirements of 19 U.S.C. 3203(b)(5)(A)(ii).

ATPDEA beneficiary country vessel. "ATPDEA beneficiary country vessel" means a vessel:

(a) Which is registered or recorded in an ATPDEA beneficiary country;

(b) Which sails under the flag of an ATPDEA beneficiary country;

(c) Which is at least 75 percent owned by nationals of an ATPDEA beneficiary country or by a company having its principal place of business in an ATPDEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of those boards are nationals of an ATPDEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPDEA beneficiary country or by public bodies or nationals of an ATPDEA beneficiary country;

(d) Of which the master and officers are nationals of an ATPDEA beneficiary country; and

(e) Of which at least 75 percent of the crew are nationals of an ATPDEA beneficiary country.

HTSUS. "HTSUS" means the Harmonized Tariff Schedule of the United States.

Preferential treatment. "Preferential treatment" means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions in the case of tuna described in § 10.253(a)(1) and free of duty in the case of any article described in § 10.253(a)(2).

United States vessel. "United States vessel" means a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46 of the United States Code.

§ 10.253 Articles eligible for preferential treatment.

(a) *General*. Preferential treatment applies to any of the following articles, provided that the article in question is imported directly into the customs territory of the United States from an ATPDEA beneficiary country within the meaning of paragraph (b) of this section:

(1) Tuna that is harvested by United States vessels or ATPDEA beneficiary country vessels, that is prepared or preserved in any manner, in an ATPDEA beneficiary country, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kilograms each; and

(2) Any of the following articles that the President has determined are not import-sensitive in the context of imports from ATPDEA beneficiary countries, provided that the article in question meets the country of

origin and value content requirements set forth in paragraphs (c) and (d) of this section:

(i) Footwear not designated on December 4, 1991, as eligible articles for the purpose of the Generalized System of Preferences (GSP) under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467);

(ii) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTSUS;

(iii) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply; and

(iv) Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the GSP.

(b) *Imported directly defined*. For purposes of paragraph (a) of this section, the words "imported directly" mean:

(1) Direct shipment from any ATPDEA beneficiary country to the United States without passing through the territory of any country that is not an ATPDEA beneficiary country;

(2) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not an ATPDEA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

(c) *Country of origin criteria*—(1) *General*. Except as otherwise provided in paragraph (c)(2) of this section, an article described in paragraph (a)(2) of this section may be eligible for preferential treatment if the article is either:

(i) Wholly the growth, product, or manufacture of an ATPDEA beneficiary country; or

(ii) A new or different article of commerce which has been grown, produced, or manufactured in an ATPDEA beneficiary country.

(2) *Exceptions*. No article will be eligible for preferential treatment by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The principles and examples set forth in § 10.195(a)(2) will apply equally for purposes of this paragraph.

(d) *Value content requirement*—(1) *General*. An article may be eligible for preferential treatment only if the sum of the cost or value of the materials produced in an ATPDEA beneficiary country or countries, plus the direct costs of processing operations performed in an ATPDEA beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Commonwealth of Puerto Rico, U.S. Virgin Islands and CBI beneficiary countries*. For the specific purpose of determining the percentage referred to in paragraph (d)(1) of this section, the term "ATPDEA beneficiary country" includes the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country as defined in § 10.191(b)(1). Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands or any CBI beneficiary country must be included in the article prior to its final exportation to the United States from an ATPDEA beneficiary country as defined in § 10.252.

(3) *Materials produced in the United States*. For purposes of determining the percentage referred to in paragraph (d)(1) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico). The principles set forth in paragraph (d)(4)(i) of this section will apply in determining whether a material is "produced in the customs territory of the United States" for purposes of this paragraph.

(4) *Cost or value of materials*—(i) *"Materials produced in an ATPDEA beneficiary country or countries" defined*. For purposes of paragraph (d)(1) of this section, the words "materials produced in an ATPDEA beneficiary country or countries" refer to those materials incorporated in an article which are either:

(A) Wholly the growth, product, or manufacture of an ATPDEA beneficiary country or two or more ATPDEA beneficiary countries; or

(B) Substantially transformed in any ATPDEA beneficiary country or two or more ATPDEA beneficiary countries into a new or different article of commerce which is then used in any ATPDEA beneficiary country as defined in § 10.252 in the production or manufacture of a new or different article which is imported directly into the United States. For

purposes of this paragraph (d)(4)(i)(B), no material will be considered to be substantially transformed into a new or different article of commerce by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The examples set forth in § 10.196(a), and the principles and examples set forth in § 10.195(a)(2), will apply for purposes of the corresponding context under paragraph (d)(4)(i) of this section.

(ii) *Failure to establish origin*. If the importer fails to maintain adequate records to establish the origin of a material, that material may not be considered to have been grown, produced, or manufactured in an ATPDEA beneficiary country or in the customs territory of the United States for purposes of determining the percentage referred to in paragraph (d)(1) of this section.

(iii) *Determination of cost or value of materials*.

(A) The cost or value of materials produced in an ATPDEA beneficiary country or countries or in the customs territory of the United States includes:

(*1*) The manufacturer's actual cost for the materials;

(*2*) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(*3*) The actual cost of waste or spoilage, less the value of recoverable scrap; and

(*4*) Taxes and/or duties imposed on the materials by any ATPDEA beneficiary country or by the United States, provided they are not remitted upon exportation.

(B) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value will be determined by computing the sum of:

(*1*) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(*2*) An amount for profit; and

(*3*) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

(5) *Direct costs of processing operations*—(i) *Items included*. For purposes of paragraph (d)(1) of this section, the words "direct costs of processing operations" mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Those costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

(A) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(B) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(C) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(D) Costs of inspecting and testing the specific merchandise.

(ii) *Items not included.* For purposes of paragraph (d)(1) of this section, the words "direct costs of processing operations" do not include items which are not directly attributable to the merchandise under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(A) Profit; and

(B) General expenses of doing business which either are not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(6) *Articles wholly the growth, product, or manufacture of an ATPDEA beneficiary country.* Any article which is wholly the growth, product, or manufacture of an ATPDEA beneficiary country as defined in § 10.252, and any article produced or manufactured in an ATPDEA beneficiary country as defined in § 10.252 exclusively from materials which are wholly the growth, product, or manufacture of an ATPDEA beneficiary country or countries, will normally be presumed to meet the requirement set forth in paragraph (d)(1) of this section.

§ 10.254 Certificate of Origin.

A Certificate of Origin as specified in § 10.256 must be employed to certify that an article described in § 10.253(a) being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.251. The Certificate of Origin must be prepared by the exporter in the ATPDEA beneficiary country. Where the ATPDEA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(a) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(b) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

§ 10.255 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for an article described in § 10.253(a), the importer must make a written declaration that the article qualifies for that treatment. The written declaration should be made by including on the entry summary, or equivalent documentation, the symbol "J+" as a prefix to the subheading of the HTSUS in which the article in question is classified. Except in any of the circumstances described in § 10.256(d)(1), the declaration required under this paragraph must be based on a complete and properly

executed original Certificate of Origin that covers the article being imported and that is in the possession of the importer.

(b) *Corrected declaration*. If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

§ 10.256 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records*. Each importer claiming preferential treatment for an article under § 10.255 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.255(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate*. An importer who claims preferential treatment on an article under § 10.255(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be on Customs Form 449, including privately-printed copies of that Form, or, as an alternative to Customs Form 449, in an approved computerized format or other medium or format as is approved by the Office of Field Operations, U.S. Customs Service, Washington, DC 20229. An alternative format must contain the same information and certification set forth on Customs Form 449;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph, "identical articles" means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate*. If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General*. Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

> I hereby certify that the article covered by this shipment qualifies for preferential tariff treatment under the ATPDEA.
>
> Check One:
>
> ( ) Producer
> ( ) Exporter
> ( ) Importer
> ( ) Agent
>
> _____
> Name
>
> _____
> Title
>
> _____
> Address
>
> _____
> Signature and Date

(2) *Exception*. If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.254 through 10.256, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a

failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a "series of importations" means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.257 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs*. A claim for preferential treatment made under § 10.255, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.256, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. or ATPDEA beneficiary country materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements*. In order to make a claim for preferential treatment under § 10.255, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it meets the country of origin and value content requirements set forth in § 10.253(c) and (d). A properly completed Certificate of Origin in the form prescribed in § 10.254(b) is a record that would serve this purpose;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the ATPDEA beneficiary country to the United States. If the imported article was shipped through a country other than an ATPDEA beneficiary country and the invoices and other documents from the ATPDEA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.253(b)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

PART 163—RECORDKEEPING

7. The authority citation for Part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

8. The Appendix to Part 163 is amended by adding three new listings under section IV in numerical order to read as follows:

APPENDIX TO PART 163—INTERIM (a)(1)(A) LIST

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IV. * * *

§ 10.246 ATPDEA Textile Certificate of Origin

§ 10.248 ATPDEA Declaration of Compliance for Brassieres

§ 10.256 ATPDEA Non-textile Certificate of Origin

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ROBERT C. BONNER,
Commissioner of Customs.

Approved: February 27, 2003.

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

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